

REMARKS

Claims 1-8, 23, 24, 30, and 31 are pending in the present application.

Claims 1, 2, 4-6, and 8 have been rejected under 35 U.S.C. §102(e) as being anticipated by Cohen (US Publication Number 2002/0179921). This rejection under 35 U.S.C. §102(e), to claims 1, 2, 4-6, and 8, is respectfully traversed.

In presenting the present rejection under 35 USC §102(e), the Examiner is apparently alleging that the effective US filing date of Cohen is the filing date of US Provisional Application Number 60/295,375 (June 2, 2001) because the filing date of the US Patent Application from which this publication is based is June 3, 2002 which is subsequent to the filing date of the present application. Thus, Cohen can only qualify as prior art under 35 USC §102(e) if Cohen is entitled to the earlier priority date of US Provisional Application Number 60/295,375.

To be entitled to the earlier priority date under 35 U.S.C. §119, the Examiner has the burden to demonstrate and establish that the appropriate subject matter upon which the rejection is based meets the requirements of 35 U.S.C. §119, namely The Examiner has properly established that the priority document satisfies the enablement and written description requirements of 35 U.S.C. §112, first paragraph.

With respect to the present rejection, the Examiner has failed to provide any evidence that the underlying priority document, US Provisional Application Number 60/295,375, contains the subject matter upon which the rejection is based and/or that US Provisional Application Number 60/295,375 satisfies the enablement and written description requirements of 35 U.S.C. §112, first paragraph, with respect to the subject matter upon which the rejection is based.

Therefore, since the Examiner has failed to provide any evidence establishing that the Cohen is entitled to a 35 USC §102(e) date of June 2, 2001, Cohen fails to qualify as prior art under 35 USC §102(e) because the effective 35 USC §102(e) date of Cohen is June 3, 2002, which is subsequent to the effective filing date of the present application.

However, assuming that the Examiner can clearly demonstrate that the underlying priority document, US Provisional Application Number 60/295,375, contains the subject matter upon which the rejection is based and/or that US Provisional Application Number 60/295,375 satisfies the enablement and written description requirements of 35 U.S.C. §112, first paragraph, with respect to the subject matter upon which the rejection is based, the Applicants offer the following remarks with respect to the teachings of Cohen.

The presently claimed invention, as set forth in amended independent claim 1, is directed to a metallization stack in an integrated MEMS device. The metallization stack includes a substrate having an electrically conductive structure; a field oxide, having a contact hole therein, formed over the substrate; a silicide layer formed in the contact hole of the field oxide; a titanium-tungsten layer, formed directly on the silicide layer, to operatively contact the electrically conductive structure in the substrate; and a platinum layer formed over the titanium-tungsten layer. The silicide layer, titanium-tungsten layer, and platinum layer, together, form an electrical connection to the electrically conductive structure.

In formulating the rejection under 35 USC §102(e), the Examiner alleges that Cohen teaches at paragraphs [0145] – [0156] a silicide layer (Examiner notes paragraph [0152] of Cohen) formed on a semiconductor substrate (Examiner notes paragraph [0146] of Cohen) of the integrated circuit device, a titanium-tungsten layer (Examiner notes paragraph [0153] of Cohen) formed directly on silicide layer to operatively contact an electrically conductive in the semiconductor substrate of the integrated MEMS device, a conductive layer (Examiner notes paragraph [0154] of Cohen) formed over the titanium-tungsten layer. This position by the Examiner is respectfully traversed.

With respect to paragraphs [0145] through [0156] of Cohen, these paragraphs teach the formation of a sealing structure (See paragraph [0143] of Cohen). These paragraphs, [0145] through [0156] of Cohen, fail to teach a silicide layer, titanium-tungsten layer, and platinum layer, together, forming an electrical connection to an electrically conductive structure, as set forth in amended independent claim 1.

Moreover, these paragraphs, [0145] through [0156] of Cohen, explicitly teach a metal silicide formed directly on a silicon oxide layer, and thus, these paragraphs, [0145] through

[0156] of Cohen, fail to teach a silicide layer formed in a contact hole of a field oxide, as set forth in amended independent claim 1.

With respect to amended dependent claim 4, paragraphs, [0145] through [0156] of Cohen, fail to teach that the platinum layer is a portion of a platinum wiring formed on the field oxide.

In summary, Cohen fails to teach a silicide layer, titanium-tungsten layer, and platinum layer, together, forming an electrical connection to an electrically conductive structure, as set forth in amended independent claim 1. Also, Cohen fails to teach a silicide layer formed in a contact hole of a field oxide, as set forth in amended independent claim 1. Lastly, Cohen fails to teach that the platinum layer is a portion of a platinum wiring formed on the field oxide, as set forth in amended dependent claim 4.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Claims 3, 7, 23-26, 30, and 31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Cohen (US Publication Number 2002/0179921) in view of Tsai et al. (US-A-6,609,629). This rejection is respectfully traversed.

As clearly set forth above, independent claim 1 is patentable over the teachings of Cohen. Moreover, claims 3, 7, 23, 24, 30, and 31 are directly or indirectly dependent upon the independent claim 1. Thus, since claims 3, 7, 23, 24, 30, and 31 depend directly or indirectly from the independent claim 1 and it has been demonstrated that independent claim 1 is patentable over the cited prior art, claims 3, 7, 23, 24, 30, and 31 must also be patentable.

Accordingly, in view of the remarks set forth above, the Examiner is respectfully requested to reconsider and withdraw this rejection under 35 U.S.C. §103(a).

REQUEST TO RECONSIDER AND WITHDRAW THE FINALITY OF THE OFFICE

ACTION DATED APRIL 23, 2003

MPEP §706.07(a) states, "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with

the fee set forth in 37 CFR 1.17(p).” Therefore, absent an amendment to the claims or an information disclosure statement necessitating the new grounds of rejection, the new grounds of rejection cannot be properly made final.

In the present situation, the Applicants responded to the Examiner’s Office Action, dated February 6, 2003, with arguments clearly demonstrating the deficiencies in the Examiner’s rejection of claims 1-8, 23-26, 30, and 31 under 35 U.S.C. §103(a) based upon the teachings of Tsai et al. (US-A-6,609,629) and Pyke (US-A-5,417,821). In response to the Applicants’ arguments, the Examiner stated in the Office Action, dated April 23, 2003, that the Applicants’ arguments were persuasive and thus the rejection of claims 1-8, 23-26, 30, and 31 under 35 U.S.C. §103(a) based upon Tsai et al. and Pyke was withdrawn.

The Examiner could not have withdrawn the rejection based on any amendments presented by the Applicants because the Applicants did not present any amendments in their Response of April 9, 2003. The Applicants only presented arguments in their Response of April 9, 2003. Notwithstanding, the Examiner is apparently trying to justify the finality of the present rejection by alleging that the new grounds of rejection was necessitated by amendments presented by the Applicants’ Response, dated December 24, 2002.

It is clear from the record that the Examiner’s new grounds of rejection was not necessitated by the amendments of December 24, 2002 because it is obviously clear from the record that the Examiner would have and should have presented the new grounds of rejection in the Office Action, dated February 6, 2003, not in the subsequent Office Action, dated April 23, 2003, if the new grounds of rejection, as alleged, was necessitated by the amendments of December 24, 2002.

In summary, the new grounds of rejection was not necessitated by amendments to the claims because the Applicants did not present any amendments in their Response of April 9, 2003, but was necessitated by the persuasiveness of the Applicants’ Arguments of April 9, 2003. Moreover, the MPEP clearly states that it is improper to make a rejection final based on new grounds of rejection that is not necessitated by amendments to the claims.

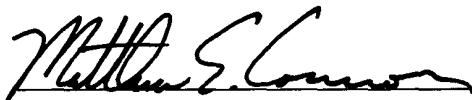
Therefore, in view of the various reasons set forth above, the Applicants respectfully request that the Examiner reconsider and withdraw the finality of the Office Action dated April

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23, 2003. Moreover, the Applicants respectfully request that the present amendments to the claims be entered.

Accordingly, in view of the remarks set forth above, the Examiner is respectfully requested to reconsider and withdraw all the present rejections. Also, an early indication of allowability is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew E. Connors", written over a horizontal line.

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